



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

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ATTORNEY GENERAL

August 22, 1974

The Honorable Robert S. Calvert  
Comptroller of Public Accounts  
State Finance Bldg.  
Austin, Texas

Opinion No. H- 378

Re: Whether unlicensed surety  
companies may furnish bonds  
in satisfaction of the security  
required under Art. 20.021 (N)  
(1), Taxation-General, V. T. C. S.

Dear Mr. Calvert:

As a result of the number of delinquent sales tax accounts and the difficulty in collecting them, the 63rd Legislature added Sec. N to Article 20.021, Taxation-General, V. T. C. S., reading, in part:

(N) Bonds or Securities

(1) Every person who holds a sales tax permit under this Chapter as of January 1, 1974, and is delinquent in the payment of any taxes, penalties and/or interest on January 1, 1974, and every applicant for a sales tax permit on or after January 1, 1974, shall furnish to the Comptroller a cash bond, a bond from a surety company chartered or authorized to do business in the State of Texas, certificates of deposits, certificates of Savings or U.S. Treasury bonds or, subject to the discretion and approval of the Comptroller, an assignment of negotiable stocks or bonds, or such other security as the Comptroller may deem sufficient to secure the payment of taxes under this Chapter . . . .  
(emphasis added)

Apparently many small businesses in Texas have been unable to purchase a bond or to furnish cash or other specified security as required

by the statute. As a result, some of these businesses have sought the assistance of surplus lines agents who offer to procure the necessary bonds from out-of-state insurance companies not licensed to do business in Texas.

You ask whether and under what circumstances Article 20.021 (N) (1) permits the Comptroller to accept bonds written by unlicensed surety companies, and you specifically bring to our attention Article 1.14-2 of the Texas Insurance Code which deals with surplus lines insurance --insurance which cannot be obtained from duly licensed, regulated insurers conducting business in this state.

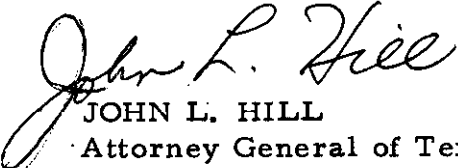
By the very terms of Article 1.14-2 surplus lines insurance is insurance with an unauthorized insurer. Authorized carriers are those licensed by the State Board of Insurance to do business in Texas. Article 1.14, Sec. 1, Insurance Code, V. T. C. S.

Therefore, it is our opinion, that the Comptroller of Public Accounts is not obligated to accept bonds written by unlicensed surety companies, but he may do so if he first determines that they provide sufficient security to secure the payment of taxes.

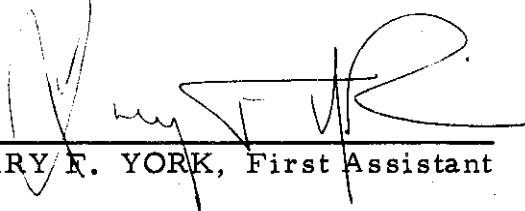
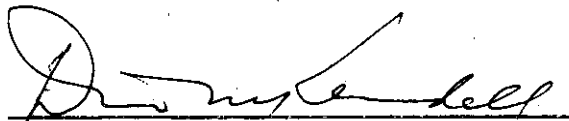
#### SUMMARY

An unlicensed surety company is not one authorized to do business in the State of Texas under Article 20.021 (N) (1), Taxation-General, V. T. C. S., so as to require the Comptroller to accept its bond in satisfaction of that statute, although he may accept it if he determines it provides adequate security.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
LARRY F. YORK, First Assistant  
DAVID M. KENDALL, Chairman  
Opinion Committee

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